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FROM ROSENZWEIG & WOLOSKY LLP

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Hon. P. Kevin Castel
United States District Court Judge
500 Pearl Street
New York, NY 10007-1312

Re: GoSMILE, Inc. v. Dr. Jonathan B. Levine, D.M.D., P.C. and Dr. Jonathan B. Levine, 10-CIV-8663 (PKC) (DCF)

Dear Judge Castel:

We represent Defendants in this matter. On January 4, 2011 we filed a motion pursuant to Fed. R. Civ. P. 12 (b)(6) to dismiss Counts I through V and Count VIII of the Complaint. (Docket # 37, 38) Go SMiLE filed its opposition to the motion to dismiss on February 18, and Defendants filed their reply memorandum of law in support of the motion to dismiss on March 4, 2011. (Docket # 69, 73)

As the Court is well aware, during the period between Defendants' filing of their motion to dismiss and today, the Court held three days of evidentiary hearings on Go SMiLE's preliminary injunction motion, and received over 150 exhibits into evidence. (Docket # 70) The parties also thoroughly briefed the motion for preliminary injunction, and submitted written closing arguments. (Docket # 74-75).

Given the parties' extensive submissions and the Court's thorough familiarity of the record, we believe the action is ripe for summary judgment. We respectfully request that Defendants pending motion to dismiss be converted to a motion for summary judgment, pursuant to Fed. R. Civ. P. 12(d).

We further request a pre-motion conference with the Court, pursuant to the Court's Individual Practice 2.A.1, so that the Court may instruct the parties what additional submissions from the parties, if any, would be of assistance to the Court if Defendants' motion were converted to one for summary judgment.

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March 11, 2011

Page 2

We thank the Court in advance for its consideration of this matter.

Respectfully submitted,


Kyle C. Bisceglie

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